IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5011 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DIVISIONAL CONTROLLER

Versus

A.G. MACWAN

Appearance:

1. Special Civil Application No. 5011 of 1989

MR Hardik RAVAL for Petitioner No. 1

MR HARDIK C RAWAL for Petitioner No. 1

SERVED BY AFFIX.-(R) for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Raval for the petitioner. The respondent has been served with the notice of rule but has not appeared before this Court

either in person or through any advocate.By way of this petition, the petitioner has challenged the award made by the labour court in Reference No. 195 of 1986 dated 7th October, 1988 wherein the labour court has granted reinstatement with continuity but without back wages for the intervening period. This petition was admitted by this court but no stay has been granted against reinstatement and therefore, the respondent must have been reinstated in service by the corporation.

Mr.Raval for the petitioner has submitted that the respondent was on duty on 2.12.1974 and meanwhile his bus was checked by the checking staff and it was found that there were 21 passengers but only four passengers were having tickets and 17 passengers were found without tickets from whom the respondent has not recovered fares and on that basis, the respondent was served with the chargesheet and thereafter departmental inquiry was initiated and after completion of the enquiry, the respondent was dismissed from service on 1st February, 1980. Learned advocate Mr. Raval has submitted that the respondent has committed misconduct in not recovering fares and also in not issuing tickets to those 17 passengers and in view of such serious misconduct resulting into financial loss to the corporation, the labour court should not have interfered with the punishment imposed by the corporation. Alternatively, it was his submission that in view of such serious misconduct committed by the respondent, the labour court ought to have imposed some punishment while reinstating the respondent in service with continuity of service and without back wages. According to him, denial of back wages cannot be considered to be punishment and some further punishment ought to have been imposed by the labour court. Except these submissions, no other submissions were made by Mr. Raval.

I have considered the submissions made by Mr. Raval. I have also perused the award in question made by the labour court. Upon perusal of the award in question, it appears that the labour court has considered the charges levelled against the respondent and has believed the explanation given by the respondent wherein the respondent has explained that at the time when one passenger Kiritbhai Patel boarded in the bus, he was injured in the bus and therefore he immediately attended the said passenger and some treatment was given to the said passenger and meanwhile his bus was checked by the checking squad and the passenger was sent for medical treatment to the doctor and there after within ten minutes when he crossed the distance of about 3 kms, bus

was checked and, therefore he has not been able to issue the tickets to the concerned passengers due to the said incident. Before the labour court, certificate issued by the Doctor Ramesh Parikh has been produced at page 13 and the statement of the injured passenger namely Kirit Patel which statement was given before the Depot Managerwas on record at page 14 of the papers of inquiry and the labour court, after considering evidence before it and also after considering the explanation tendered by the respondent workman, believed it as true and has thereafter come to the conclusion that the explanation given by the respondent that one passenger was injured and he was attending that passenger and was giving treatment and meanwhile bus was checked and, therefore, he was not able to issue tickets to those passengers from whom he has not recovered the fares, was true. In view of these aspects, the labour court exercised the powers under section 11A of the I.D.Act while keeping in view the 16 years' service of the respondent and the past record in detail and has appreciated that in past, there was no misconduct of dishonesty and misappropriation and therefore, the labour court considered that in such situation when the respondent was doing the road booking after attending the injured passenger and the bus was checked at the distance of only 3 km and, therefore, in light of these facts, the misconduct cannot be considered to be serious one and, therefore, the labour court was of the view that the punishment of dismissal, in such circumstances, was harsh and unjustified and, therefore, it granted reinstatement with continuity of service without back wages. Therefore, in light of these facts, according to my opinion, the labour court was right in exercising the discretion in favour of the respondent workman in reinstating him in service without back wages. Mr. Raval has not been able to point out any infirmity in the award made by the labour court. He has also not been able to point out any jurisdictional error and/or procedural irregularity committed by the labour court. Therefore, the award made by the labour court does not require interference of this court in exercise of the powers under Article 226/227 of the Constitution of India.

For the reasons recorded hereinabove, this petition is dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated with no order as to costs.

11.4.2002. (H.K. Rathod,J.)
Vyas